

# Cigarette and Tobacco Products Taxes

## NEWSLETTER

### Low-Cost Stamp Validators Are Now Available

One of the benefits of the new encrypted cigarette tax stamp introduced in December 2010 is that it combines overt and covert counterfeit-resistant features in the printed design. The upgraded stamp integrates high-security inks and forensic security features that provide for immediate authentication by retailers and enforcement agencies.

To assist in authentication of the new encrypted cigarette tax stamp, a special low-cost double filter validation device is available for purchase. These validators are specifically designed to match the color-shift feature on authentic tax stamps. This device provides a tool that is:

- Easy to use
- Effective
- Practical
- Small and light as a credit card
- Hand-held
- Reasonably-priced

Validators can immediately determine the authenticity of encrypted cigarette tax stamps.

To purchase a validator, please visit the BOE website at [www.boe.ca.gov/sptaxprog/casvpi.htm](http://www.boe.ca.gov/sptaxprog/casvpi.htm). Validators will be distributed by an authorized BOE vendor. Each validator is \$5.00 plus sales tax, shipping and handling, with credit card payment required at time of purchase. Validators are shipped directly to the purchaser.

### Cigarette and Tobacco Products Retail Licenses—home-based businesses

If you operate a home-based business that sells cigarettes or tobacco products at retail, you must have a retail license for that location. The California Cigarette and Tobacco Products Licensing Act of 2003 requires a retailer to maintain a separate license and pay a \$100 fee for each location where cigarettes and/or tobacco products are sold.

The licenses are valid for one year and must be renewed annually before the due date. Otherwise, a reinstatement fee of \$100 per location will be charged to reactivate the license. The retailer is also required to hold a valid BOE sales and use tax permit as well as any permits and licenses required by their local governments.

Home-based business operators are subject to the same routine inspections of the business as commercial locations. Purchase invoices for cigarette and tobacco products are required to be maintained at each licensed location for one year, and the cigarette and tobacco products license holder is required to keep complete purchase invoices for four years following the purchase dates for audit purposes.

Please refer to [publication 78](#), *Sales of Cigarettes and Tobacco Products in California*, for additional information regarding licensing requirements for retailers, and refer to [publication 152](#), *Cigarette and Tobacco Product Inspections*, for additional information.

### You must have your Cigarette and Tobacco Products Distributor's License in hand to start business

If you purchase untaxed cigarette and/or tobacco products for resale, you are considered a distributor and must hold a California Cigarette and Tobacco Products Distributor's License under both the California

Cigarette and Tobacco Products Licensing Act of 2003 (the Act) and the Cigarette and Tobacco Products Tax Law (Tax Law).

Pursuant to the Act, the license fee for a distributor's license is for one calendar year and may not be prorated. The license will be valid from the date of activation to the end of the calendar year. The license is not assignable or transferable and must be renewed annually by completing and returning a renewal application ([BOE-400-LDR](#)) and submitting the renewal fee. Even if you have submitted an application ([BOE-400-LD](#)) and paid the licensing fee to the BOE (\$1000 for each location), under the Tax Law, you legally cannot sell cigarettes or tobacco products until you receive your Cigarette and Tobacco Products Distributor License.

Pursuant to the Act, in addition to the distributor license, you will also need a license under the Tax Law in order to file the required tax forms, purchase encrypted cigarette tax stamps, and in the case of other tobacco products, submit payment of the tax. If you are a sole owner or partnership, you must complete the permit application form ([BOE-400-ETI](#)). A corporation or a limited liability company/organization must complete form [BOE-400-ETC](#). You must post a one-time minimum security deposit of \$1,000 for each business location. The Tax Law does not require a new application unless the business ownership changes.

Please note that until you complete all of the registration requirements listed above under the Act and the Tax Law, you are not licensed to operate as a Cigarette and Tobacco Products Distributor. Your licenses will be issued once the required forms ([BOE-400-LD](#), [BOE-443](#), [BOE-598](#), and [BOE-400-ETI](#) or [BOE-400-ETC](#)), applicable license fee (\$1,000 per location), and security deposit (\$1,000 per location) have been received and approved.

For more information about the cigarette and tobacco products program, please visit our website at [www.boe.ca.gov/sptaxprog/spexcise.htm](http://www.boe.ca.gov/sptaxprog/spexcise.htm).

### Retailers of cigarette and tobacco products—transfers between multiple locations

If you are a retailer of cigarette and tobacco products, operating multiple retail locations in California and hold a Cigarette and Tobacco Products Retailer's License for each location, we recognize there are occasions when transfers of cigarettes or tobacco products between your retail stores take place. However, a transfer of products between your retail stores is permitted only in specific instances.

A retailer with multiple locations may transfer products from one location to another only when the retailer is the legal owner of both locations, there is documentation to prove that the product is tax-paid, and the documentation is made available to BOE staff during an inspection. In order to prove that the transferred product is tax-paid, the retailer must provide the following at the time of inspection:

- A copy of the original purchase invoice;
- Legible records showing the name, address, and license number of each retail location;
- The date the transfer took place;

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- A detailed description of the items transferred including packaging, flavor and style; and
- The number of items transferred.

The description must match exactly the description on the original purchase invoices and the number of items transferred cannot exceed the number of items on the original purchase invoice. Without this documentation available at the time of inspection, it is not possible to establish that the product is tax-paid and the product is subject to seizure.

Please refer to [publication 78](#), *Sales of Cigarettes and Tobacco Products in California*, for additional information in regard to the transfer of product between retail locations. For answers to other questions, please visit the BOE website at [www.boe.ca.gov](http://www.boe.ca.gov). You may also call the Taxpayer Information Section at 800-400-7115 (TTY:711) and select the option for Special Taxes and Fees. Assistance is available weekdays from 8:00 a.m. to 5:00 p.m. (Pacific time), except state holidays.

### **Roll-Your-Own cigarette machines do not make a retailer a manufacturer**

A retailer providing access to rolling machines for use by their customers are not considered a manufacturer and do not need to obtain a manufacturer's license under the Cigarette and Tobacco Products Licensing Act of 2003. These retailers also do not have any reporting requirements under the Cigarette and Tobacco Products Tax Law.

If the retailer sells the loose tobacco and just allows the customer to use the retailer's equipment to combine the loose tobacco and the cigarette tubes to create cigarettes these are considered retail sales of loose tobacco. The resulting change in form or character of the loose tobacco occurs after the sale to the customer. Thus, the use of the retailer's machine to manufacture cigarettes occurs when the tobacco is owned by the customer.

### **eFile is coming**

The BOE is developing an eFile system that will allow cigarette manufacturers and distributors to file their returns, reports, and schedules electronically. For taxpayers, eFiling is convenient, fast, and secure; and the most accurate way to file returns, reports, and schedules. For the BOE, eFiling reduces the cost of administering tax and fee programs, and reduces paper and printing costs making it environmentally friendly. Details on the new eFile system will follow in the months to come.

### **Information regarding the decision of the U.S. Food and Drug Administration on electronic cigarettes**

On April 25, 2011, the U.S. Food and Drug Administration (FDA) issued a notice that electronic cigarettes (eCigarettes) shall be regulated as a tobacco product.

eCigarettes do not fall under the California Cigarette and Tobacco Products Tax Law definition of a cigarette or tobacco product since they do not contain tobacco. Therefore, eCigarettes are not subject to California's cigarette or tobacco products excise tax and thus, no cigarette or tobacco products license is required under the California Cigarette and Tobacco Products Tax Law or the California Cigarette and Tobacco Products Licensing Act of 2003.

For additional information regarding the cigarette and tobacco products tax program, please visit our website at [www.boe.ca.gov/sptaxprog/spexcise.htm](http://www.boe.ca.gov/sptaxprog/spexcise.htm).

### **Annual Taxpayers' Bill of Rights hearings to begin**

Do you have suggestions for improving our services? Do you want us to look more closely at a policy or procedure? If you do, come share your ideas and concerns with our Board Members at the annual Taxpayers' Bill of Rights hearings. You can present your proposal orally or in writing.

The dates and times for the 2012 business and property tax hearings were not yet set when this article went to press, but you may check our website or contact the Taxpayers' Rights Advocate for details.

Although you are not required to make advance arrangements to speak, it will help us to prepare if you contact the Taxpayers' Rights Advocate Office at 888-324-2798 beforehand to let us know your topic. If your proposal is complex or extensive, we encourage you to submit it in advance and then summarize it in your oral presentation.

For more details, please call the Taxpayers' Rights Advocate Office or visit us at [www.boe.ca.gov](http://www.boe.ca.gov) (click on the tab "Your Rights" and choose "Taxpayers' Rights Advocate"), where you can also view the office's current annual report.

### **More articles available online!**

There are occasions when we have more articles than we have space for in this print version of the Cigarette and Tobacco Products Taxes Newsletter. The additional articles are available online at [www.boe.ca.gov/news/etncont.htm](http://www.boe.ca.gov/news/etncont.htm). The supplemental articles are: *Cigarette and Tobacco Products Retailers: Remember to retain your invoices*, and *Know your rights*.

### **Civil behavior in trying times**

Some observers have noted that civility is decreasing in our society as our lives become more complex. We know that you may find yourself frustrated with the difficulties of the tax law or pressed for time when dealing with our staff. Still, we ask that you treat our employees just as you would like to be treated in a business situation. Any statement or gesture made to a Board of Equalization employee that seems remotely like a threat—even a statement made in jest—will be referred to our Internal Affairs Section for investigation.

### **Ethics at work—"thank you" is enough**

We would like to remind you that BOE policy prevents our employees from accepting gifts of any type. So if you are grateful to someone for going the extra mile to help you with a complicated issue, a simple "thank you" will do. You can also use our online Customer Service Survey form at [www.boe.ca.gov/info/survey.htm](http://www.boe.ca.gov/info/survey.htm) to express yourself.

For additional information you may download regulations, forms and publications from our website or you may call our Taxpayer Information Section to talk to a Board of Equalization representative.

BOE website and Board Member contact information: [www.boe.ca.gov](http://www.boe.ca.gov)

Taxpayer Information Section  
800-400-7115 • TTY:711

Taxpayers' Rights Advocate • 888-324-2798

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### SUPPLEMENTAL ARTICLES

#### Cigarette and Tobacco Products Retailers: Remember to retain your invoices

Please remember that you must retain purchase invoices for your resale stock of cigarettes and tobacco products for a period of four years. The most recent twelve months of invoices must be kept at the retail location for at least one year after purchase and shall be available upon request during the normal business hours for inspection and copying by BOE staff or a law enforcement agency. Any retailer who fails, refuses, or neglects to retain or make available invoices for inspection is in violation of the Cigarette and Tobacco Products Licensing Act (Act) and can be cited. The invoices that you receive from licensed distributors or wholesalers under the Act must include the following information:

- The name of the wholesaler or distributor from whom the cigarettes or tobacco products were purchased.
- The address, telephone number, and license number of the wholesaler or distributor.
- The amount of California excise taxes the distributor or wholesaler owes or paid on the sale of the cigarettes or tobacco products. However, a distributor that is also a retailer or manufacturer may include a statement that reads, "All California cigarette and tobacco products taxes are included in the total amount of this invoice."
- An itemized list of the cigarettes or tobacco products purchased from the licensed distributor or wholesaler.
- Your name, address, and retail cigarette and tobacco products license number.
- The date of the sale.

*Reminder:* The Revenue and Taxation code does not allow cigarette and tobacco products to be sold between retailers (Revenue and Taxation code section 30478). See [Retailers of Cigarette and tobacco products—transfers between multiple locations](#) for further information regarding transfers between retailers.

#### Know your rights

As a taxpayer, you have many rights under the law, including the right to:

- Receive information and assistance to help you comply with the law
- Be treated fairly and courteously, and receive prompt service
- Appeal a decision or claim a refund as allowed by law

Of course, along with those rights, you have certain responsibilities, including the responsibility to:

- Keep informed about tax laws and regulations that affect your business
- Report and pay taxes and fees when due
- Maintain adequate records

For more information about your rights, please refer to [publication 70, Understanding Your Rights as a California Taxpayer](#).

#### On-line business registration coming soon

The Board of Equalization (BOE) will be offering a new service called eReg that will allow businesses to register for a permit or license online for the tax and fee programs administered by the BOE.

The new eReg system will be implemented in early 2012. eReg will provide you an easy, quick, and accurate method of registering your business. No more filling out paper applications! The new system will also create efficiencies and generate cost savings for California.

eReg will guide you through the process whether or not you know what type of registration you require. Answers to questions regarding your business activity will direct you to the appropriate registration type(s) required.

Details regarding the new system will be available on our website, [www.boe.ca.gov](http://www.boe.ca.gov) as we approach implementation.